IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 244 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and

MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

NATHALAL KARSANDAS

Appearance:

MR PRANAV G DESAI WITH MR MANISH R BHATT for Petitioner

MR HM TALATI for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE C.K.BUCH

Date of decision: 07/02/2000

ORAL JUDGEMENT(Per J.N.Bhatt, J.)

The Income Tax Appellate Tribunal, Ahmedabad Bench B, has

referred the following three questions for our opinion, arising out of ITA No.394/Ahd/1982, relating to assessment year 1979-80.

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee was entitled to registration of the firm under section 185 of the Income-Tax Act, 1961?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in cancelling the order passed by the Commissioner of Income-tax under section 263 of the Income-tax Act, 1961?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that Gujarat High Court in the case of Laxmibhand Hirjibhai was not applicable to the assessee's case though assessment of partners were completed when the CIT passed his order?"

The first two questions came to be referred by the Tribunal, at the instance of the Revenue, whereas, third question has been referred, at the instance of the assessee.

As could be seen from the statement of the case of the Tribunal, the Commissioner of Income-tax in exercise of his power, cancelled the order of the Income Tax Officer granting registration of the firm with a direction to enquire into the genuineness and validity of the firm and pass a fresh order in accordance with law. During the accounting period S.Y.2034 i.e. 12.11.1977 to 30.8.78, a minor Gopalbhai Shah attained majority on 9.8.78 and a new partnership deed was executed on 14.8.78 admitting the said Gopalbhai to partnership and the partnership was given effect from 12.11.77.

C.I.T., took the view that a valid partnership deed under the Partnership Act could not be said to have been in existence from 12.11.77 onwards and hence no registration could have been granted. He has relied on a decision of the Hon'ble Apex Court in R.C.Mitra & Sons v. CIT, 36 ITR 194, which according to him, covers the case where a partnership had been brought into existence by an oral agreement between the parties, which may, subsequently, be reduced to writing and the instrument would naturally record all terms and conditions of contract between the parties at the initial stages which had not been reduced

to writing. Accordingly, the Commissioner of Income Tax in the relevant assessment year held that it could not be said that the deed of 14.8.78 reduced to writing all the terms and conditions of contract between the parties from 12.11.77 since one of the parties was a minor upto 8.8.78 and in his view, the minor could not have legally entered into a partnership or agreed to share the losses. In this context, he came to the conclusion that, had the firm incurred any loss during the accounting year the proportionate loss upto 8.8.78 on which Shri Gopalbhai became a major could not have been allocated to him under section 30(7) of the Indian Partnership Act, 1872, whereas, a strict application of the Partnership deed would have made that possible. In short, it was his view that the fact that actually there was no loss during the year was not relevant criteria for determining the status or legal issue involved.

Being aggrieved by the order of the CIT, the matter was taken to the Tribunal, wherein, it was held that the decision of this Court in Laxmichand Hirjibhai v. CIT, (1981) 128 ITR 747 was not applicable to the facts of the case because in that case the question of validity of partnership deed which goes to the root of the matter was not involved.

As per the facts on record, Gopalbhai, who was a minor when he became a major entered into partnership and the effect thereof was that he would take on liabilities, if any, during the period of his minority. A major is capable of taking on liabilities and therefore there should not be any objection on the part of the authority as to why he should not be made a regular partner. The whole purpose of not allowing a minor to be made a partner is to prevent liabilities from being imposed upon him. Therefore, when there were no liabilities, there would be no objection to the validity of the partnership deed.

The learned advocate Mr Talati, while appearing for the assessee, in course of his submissions placed reliance on the decisions reported in Commissioner of Income Tax v. Ashokbhai Chimanbhai, 56 ITR 42, and in case of P.N.Sarmah v. CIT, 125 ITR 553, which, in our opinion, are not material as the ratio propounded therein is not attracted to the factual scenario emerging from the record of the present case.

After having heard the learned advocates appearing for the parties and considering the facts and circumstances

and the relevant proposition of law and the case law, as well, we are of the opinion that on the facts and in the circumstances of the case, the Tribunal was right in holding that the decision of this Court in Laxmichand Hirjibhai (supra) was not applicable to the assessee's case though the assessments of partners were completed when the CIT passed the order. Therefore, question No.1 is decided in negative, in favour of the Revenue and against the assessee.

Since question No.2 is corollary and ancillary to question No.1, in our opinion, it is also required to be decided in consonance with our opinion in respect of question No.1. Thus, question No.2, at the instance of Revenue is decided in negative, against the assessee and in favour of the Revenue.

Obviously, that would take us to question No.3. In our opinion, this question is required to be decided in affirmative, in favour of the Revenue and against the assessee. Accordingly, question No.3 is decided in affirmative, in favour of the Revenue and against the assessee.

In the result, the reference shall stand disposed of accordingly, without any order as to costs.

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(vjn)